

1 THE HONORABLE THOMAS S. ZILLY  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 APEXART CURATORIAL PROGRAM,  
10 INC.,

11 Plaintiff,

12 v.

13 BAYSIDE ROLLERS LLC, ABIGAIL  
14 CARSWELL, BAYSIDE HOSPITALITY  
15 LLC, a Washington Limited Liability  
16 Company, and AMERICAN URBAN ART  
17 AND GRAFFITI CONSERVATION  
18 PROJECT, a Washington Non-Profit  
19 Corporation,

Defendants.

No. 2:22-cv-01807-TSZ

**PLAINTIFF'S UNOPPOSED MOTION  
TO PERMIT PLAINTIFF TO AMEND  
COMPLAINT BASED ON RECENT  
DISCOVERY**

**NOTE ON MOTION CALENDAR:**  
**September 21, 2023**

18 **UNOPPOSED MOTION**

19 COMES NOW Plaintiff Apexart Curatorial Program, Inc. (“Plaintiff”) through its  
20 respective counsel, and Defendants Bayside Rollers LLC and Abigail Carswell (“Defendants”),  
21 by and through their respective counsel, submit this Unopposed Motion to Permit Plaintiff to  
22 Amend Complaint Based on Recent Discovery.

23 Plaintiff brought this case alleging infringement of its registered trademark APEXART by  
24 Defendants, owners of the mark APEX Art and Culture Program and its eponymous building.  
25 Plaintiff is a non-profit arts and education institution. APEX Art and Culture Program houses a

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1 museum exhibiting aerosol paint-based pieces, hosts various events, and is the home to a steak  
 2 restaurant and forthcoming cocktail bar.

3 The case is currently proceeding pursuant to the Scheduling Order entered March 23, 2023  
 4 (Dkt. No. 19 Minute Order Setting Trial Date and Related Deadlines). The operative Scheduling  
 5 Order provides that the deadline for joining additional parties was April 20, 2023.

6 As set forth below, Plaintiff respectfully requests leave to amend its Complaint to join two  
 7 additional parties based upon facts recently learned in discovery. Defendants have indicated that  
 8 they do not oppose this motion. *See* Parsons Decl. at ¶ 5. Specifically, Plaintiff respectfully seeks  
 9 leave to amend its complaint to join two additional defendants: Bayside Hospitality LLC and  
 10 American Graffiti and Urban Art Conservation Project (“AMGRAF”). The Proposed Amended  
 11 Complaint is attached as Exhibit A to this motion in compliance with LCR 15.

12 **A. The Deadline to Join Additional Parties Should Be Extended**

13 Good cause exists to amend the scheduling order to extend the deadline to join additional  
 14 parties.

15 Through discovery Plaintiff has learned of the ownership structure of APEX Art and  
 16 Culture Center, the project and building owned by Defendant Bayside Rollers LLC that  
 17 incorporates the allegedly offending mark. Plaintiff received certain emails from Defendants on  
 18 September 1, 2023 and deposed John Carswell, owner of Bayside Hospitality LLC and board  
 19 member for AMGRAF, on September 5, 2023. The emails and deposition testimony revealed that  
 20 AMGRAF owns the museum housed in APEX Art and Culture Center and that Bayside Hospitality  
 21 LLC operates the APEX Art and Culture Center building, including the restaurant and events, and  
 22 promotions using the mark “APEX Art and Culture Center.” *See* Parsons Decl. at ¶ 5.

23 Plaintiff respectfully submits that there is no prejudice to Defendants. In addition to the  
 24 fact that they did not oppose this motion, the addition of these new parties affiliated with  
 25 Defendants need not increase the complexity or duration of the case. The Parties have discussed

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1 and agree that there would be no need to make any other changes to the deadlines in the scheduling  
2 order (Dkt. No. 19). *See* Parsons Decl. at ¶ 5.

3 **B. Plaintiff Should Be Allowed Amend its Complaint to Join Additional Defendants**

4 AMGRAF and Bayside Hospitality LLC are permissive parties under Rule 20(a)(2).  
5 Plaintiff asserts relief against all parties jointly, severally, or in the alternative with respect to the  
6 same series of transactions and occurrences. Further, questions of law or fact common to all  
7 defendants will arise in the action and joinder may be necessary to afford Plaintiff relief.

8 Under Fed. R. Civ. Pro. 15(a)(2) “a party may amend its pleading only with the opposing  
9 party’s written consent or the court’s leave.” Here, Defendants do not oppose this motion and do  
10 not oppose Plaintiff’s amending the complaint. *See* Parsons Decl. at ¶ 5.

11 For the foregoing reasons, Plaintiff respectfully requests that that the Court allow Plaintiff  
12 to amend its complaint to join the two additional parties referenced above and enter the Amended  
13 Complaint attached to this unopposed motion as Exhibit A.

14 I certify that this memorandum contains 590 words, in compliance with the Local Civil  
15 Rules.

16 DATED this 21st day of September, 2023.

17 CORR CRONIN LLP

18 s/ John T. Bender

19 John T. Bender, WSBA No. 49658

20 Emily Parsons, WSBA No. 57061

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26 *Plaintiff Apexart Curatorial Program, Inc.*

27 UNOPPOSED MOTION TO PERMIT PLAINTIFF TO  
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